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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 11 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Matter of)
)
Implementation of Sections 3(n) and) GN Docket No. 93-252
332 of the Communications Act)
)
Regulatory Treatment of Mobile Services)

**REPLY COMMENTS OF
RAM MOBILE DATA USA LIMITED PARTNERSHIP**

RAM Mobile Data USA Limited Partnership ("RMD") hereby submits the following reply comments with respect to the Further Notice of Proposed Rulemaking ("Further Notice") in the above-captioned proceeding. RMD's reply comments focus on the rule changes applicable to wide-area 900 MHz SMR licensees.

I. 900 MHZ SYSTEM EXPANSION TO MODIFIED MTA BOUNDARIES ENJOYS WIDESPREAD INDUSTRY SUPPORT.

For a proceeding so inherently controversial as this one, affecting so many competitors with so different resources and interests, the comments reflect a remarkable degree of consensus on issues of importance to the SMR industry, particularly with respect to issues affecting 900 MHz service. With respect to the issue of most crucial concern to RMD, 900 MHz SMR Phase II licensing, there is almost universal support in the SMR industry for allowing existing 900 MHz licensees to expand their systems to MTA boundaries. See, e.g., Comments of AMTA at 16-19; NABER at 21-22; Geotek at 9-11; Pittencrieff Communications at 6; Air Spectrum III at 2. Those entities supporting RMD's MTA proposal represent a wide array of service providers, from those seeking nationwide coverage to those with more local service requirements. All recognize the need for existing systems to be able to expand to market boundaries and to preserve their investment in "secondary sites" within and outside these DFAs. All concur that the MTA approach affords an appropriate balance among local, regional and nationwide service requirements.

The smattering of opposition to Phase II MTA expansion comes largely from those outside of the SMR industry whose interests would be served by not seeing

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900 MHz SMR continuing to develop innovative and competitive services. For example, Southwestern Bell's complaint that allowing 900 MHz SMR the ability to expand to market boundaries would somehow put cellular systems at a significant competitive disadvantage rings hollow in light of the fact that cellular systems have a gross advantage in system capacity (416 25 kHz channels totalling 25 MHz, compared with 10, 20, or sometimes 30 12.5 kHz channels, or less than one MHz), the fact that cellular systems have had the better part of a decade both to expand within their originally-licensed market areas and to consolidate with adjacent market areas, and the preference that Southwestern Bell received in being virtually guaranteed cellular licenses throughout its region. Southwestern Bell's suggestion that wide area licensing for 900 MHz wait for yet another round of rulemaking would be nothing more than a death sentence for those systems that are trying to compete today with the vastly superior resources and spectrum already allocated to cellular carriers, which have committed huge sums to the implementation of wireless packet data communications systems over areas that are vastly larger than MTAs.

The comments of those opposing 900 MHz SMR MTA expansion also reflect little if any understanding about the licensing restrictions under which systems in this band have had to operate. For example, the assertion by NewPar, another cellular competitor, that "SMR operators have been largely unobstructed in their efforts to increase the size of their coverage areas" has no truth whatsoever for 900 MHz systems who have been unable to expand on a protected basis, inside or outside very narrow DFA boundaries.¹ Further, NewPar's complaint, like Southwestern Bell's, that allowing SMRs to expand to MTAs would give them an unfair competitive advantage over cellular conveniently ignores, among other things, the disparity in spectrum available to the different systems. RMD suggests that if Southwestern Bell and NewPar are so concerned with exact parity between cellular and SMR systems, let them first suggest that cellular carriers be reduced to 10, 20, or 30 12.5 kHz channels, and that their remaining 24 plus MHz be turned back into the Commission to foster more equal competition with SMRs.

¹ The Joint Comments of Air Touch Paging and Arch Communications take a passing opposition to allowing Phase I 900 MHz MFA licensees the ability to expand, "while new entrants were barred from applying." Joint Comments at 8. Among other things, this assertion ignores the fact that, because of the substantial number of Phase I licenses that were returned to the Commission for lack of construction, RMD's MTA proposal allows substantial spectrum for new entry. These parties' concern for new entrants also appears to be somewhat selective, as they supported and are a major beneficiary of the Commission's new rules that allow comparable rights to 900 MHz private carrier paging systems.

Indeed, it is more than a little ironic that the entire 900 MHz SMR allocation, the total available for all potential licensees (5 MHz in ten channel assignments to be divided among 20 licensees) was granted at the same time and in the same proceeding in which cellular licensees were given 5 MHz of additional spectrum each to expand their system from 20 to 25 MHz. See 900 MHz Reserve Band Allocations, 2 FCC Rcd. 1825, 1828, 1831 (1986). It has been 8 years for 900 MHz SMR licensees to wait even for this very limited allocation to be fully available for license. Under these circumstances, for cellular licensees to claim competitive disadvantage, by allowing 900 MHz SMR licensees incumbents the ability to expand on their own licensed frequencies to MTA boundaries is nothing short of outrageous.

II. WHETHER OR NOT 900 MHZ SMR AND CELLULAR SYSTEMS ARE SUBSTANTIALLY SIMILAR, PRACTICAL RULES THAT ALLOW WIDE AREA DEVELOPMENT WITHOUT UNNECESSARY REGULATORY IMPEDIMENTS ARE NECESSARY FOR EACH.

That gets to the question about whether cellular and SMR systems are "substantially similar" or not. As to this matter, RMD suggests that a single "yes" or "no" answer is probably neither possible nor necessary. Cellular and SMR systems do compete in certain markets for certain customers and, among other things, have similar needs to expand and modify their systems on a wide area basis to serve market requirements. On the other hand, differences in the amount of spectrum licensed and past licensing mechanisms and preferences mean that cellular and 900 MHz SMR systems will never be truly on an equal plane. In this regard, due to the very limited bandwidth available for 900 MHz SMR, there has been no movement toward "ESMR" type services (*i.e.*, services featuring full duplex mobile telephony with unlimited PSTN interconnection). Rather 900 MHz SMR services have been necessarily limited to data services that offer very limited, if any, interconnection, or services that offer more traditional, dispatch-oriented applications.

Fortunately, as to most issues regarding the implementation of the "regulatory parity" concept, there is substantial agreement, even among parties who take different views as to the theoretical issue of "substantial similarity." In this regard, RMD agrees with RAM Technologies, Inc. (no relationship to RMD) that the Commission should focus on the "practical alternatives" for mobile services licensing, balancing a general parity goal with the practical circumstances in which licensees of heretofore different services find themselves.² There is also general

² See RAM Technologies, Inc. Comments at 4.

support, either expressly in concept or in particular substantive proposals, for what such diverse entities as Nextel,³ U.S. West,⁴ BellSouth,⁵ GTE,⁶ and NABER⁷ all suggest as a "least restrictive" alternative approach.

This goal, which RMD fully supports, means letting systems construct, modify, expand, and operate with no more restriction than is absolutely necessary to protect the public interest. This translates into wide area licensing, which permits internal system change and modifications, the addition of sites, relocation of channels, etc., within broad areas, without requiring FCC application, approval, or auctions. This also means eliminating or not imposing, as applicable, loading requirements, use and service restrictions, stricter height or power restrictions, interoperability requirements, station identification requirements, or other procedures or requirements that create unnecessary paperwork, delays, and exposure to those who would file petitions to deny, competing applications, etc. to stifle competition or extract consideration. Those familiar with SMR licensing are also uniform in their emphasis on coupling the examination of parity in applications fees with parity in what actions require Commission application or approval.⁸

There is an overwhelming consensus of comments on all of these issues from most entities or groups, regardless of particular interest, who recognize that unnecessary regulatory requirements and burdens are not in the public interest. The limited opposition to eliminating such unnecessary restrictions should give the Commission little pause and requires little discussion.⁹ In reviewing some of the particular concerns raised about wide area licensing and changes in technology requirements, however, RMD urges the Commission to bear in mind the differences in the 800 MHz and 900 MHz SMR licensing landscape. As NABER¹⁰ and others point out, the fact that so little 900 MHz SMR spectrum has been licensed may give the Commission greater flexibility in implementing wide area licensing

³ See Nextel Comments at 49-50.

⁴ See U.S. West Comments at 6.

⁵ See BellSouth Comments at 2.

⁶ See GTE Comments at 3-9.

⁷ See NABER Comments at IV.

⁸ See, e.g., AMTA Comments at 36, Southern Company Comments at 11-12; Nextel Comments at 47-48.

⁹ For example, while RMD can quite understand why E. F. Johnson would want Motorola to be required to license its technology to other manufacturers, that desire does not justify requiring existing 900 MHz systems that employ different technologies to meet different customer requirements to be scrapped in favor of a new common interface system. See E. F. Johnson Comments at 14-16.

¹⁰ See NABER Comments at 21-22.

at 900 MHz that, while the right goal, may be more difficult to implement at 800 MHz.

III. A SPECTRUM CAP SHOULD NOT BE IMPOSED ON 900 MHz SMR SERVICES.

There is almost universal opposition to a spectrum cap applicable to 900 MHz SMRs. No one really even suggests it is needed to insure competitive entry. Instead, those few who support the application of spectrum caps to SMRs are cellular carriers who, having been defeated in their opposition to the imposition of such caps *vis-a-vis* their involvement in PCS, essentially take the position that, if it's good enough for us (cellular), it's good enough for them (SMR).¹¹

But, these companies' frustration with having lost one battle does not form a public interest rationale for applying a spectrum cap to 900 MHz SMR service. For the reasons stated above, there is simply no comparison in terms of overall market power between individual 900 MHz systems that, even by aggregating channels, may be licensed for 1 MHz of capacity with cellular systems that have 25 MHz. Nor does the very limited capacity available to 900 MHz SMR systems enable them effectively to compete, particular in voice, for the same wide market available to cellular and wide band PCS. The fact that 900 MHz SMR may develop as an effective competitor in limited niche areas, such as mobile data, in no way should limit their ability to attract needed investment from those with cellular or PCS interests. Indeed, without such investment, it is very likely that effective competition from 900 MHz SMR will not be able to be developed or maintained at all.

IV. CONCLUSION

900 MHz SMR systems dividing 5 MHz of spectrum five, ten or twenty ways and employing narrow 12.5 kHz channels can never be the competitive equal of cellular systems operating on 25 MHz of spectrum, with 25 kHz channels. But, given the opportunity to expand to MTA boundaries and other relief commensurate with wide area systems they can be a viable competitor for certain specialized services, such as mobile data. Accordingly, the question before the Commission

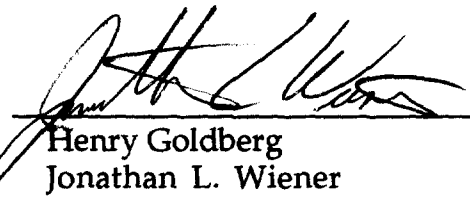
¹¹ See, e.g., Comments of Bell Atlantic Companies at 8-12.

should not be so much whether 900 MHz SMRs is competitive with cellular, but how the rules governing 900 MHz SMR systems need to be changed to allow such competition to come about.

Respectfully submitted,

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